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Nos. ~~1192, 1193~~

In the Supreme Court of the United States

OCTOBER TERM, 1945

JULIUS A. KRUG, SECRETARY OF THE INTERIOR, OSCAR L. CHAPMAN, UNDER SECRETARY OF THE INTERIOR, AND FRED W. JOHNSON, COMMISSIONER OF THE GENERAL LAND OFFICE, PETITIONERS

v.

SANTA FE PACIFIC RAILROAD COMPANY

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of the United States, prays that writs of certiorari issue to review the judgments entered in these cases on February 4, 1946, by the United States Court of Appeals for the District of Columbia.

OPINIONS BELOW

The opinion of the district court (R. 19–24) is reported in 57 F. Supp. 984. The opinion of the Court of Appeals (R. 53–58) is reported in 153 F. 2d 305.

JURISDICTION

The judgments of the Court of Appeals were entered on February 4, 1946 (R. 59). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

A release of "any and all claims of whatever description to lands, interests therein, compensation or reimbursement therefor on account of lands or interests granted, claimed to have been granted, or claimed should have been granted by any act of the Congress * * * in aid of the construction of any portion of its railroad" was given by a railroad company, as required by the Transportation Act of 1940, as a condition precedent to charging the United States full commercial rates for transportation. The questions presented are:

1. Whether, despite such release, the railroad is entitled to select lands under the Acts of 1874 and 1904, which gave the railroad the right to select lands in lieu of lands previously granted for the purpose of aiding construction of the railroad but which had been occupied by settlers after the railroad's rights attached, the railroad having relinquished and reconveyed the occupied lands to the United States as required by the statutes.

2. Whether relief in the nature of mandamus

or mandatory injunction may be granted to overrule the Interior Department's view that the release barred such claims when there is no finding that this view reflects a misapprehension of the Department's plain ministerial duty.

STATUTES INVOLVED

The relevant portions of the Act of July 27, 1866, c. 278, 14 Stat. 292, the Act of June 22, 1874, c. 400, 18 Stat. 194, 43 U. S. C. 888, the Act of April 28, 1904, c. 1810, 33 Stat. 556, and the Transportation Act of September 18, 1940, c. 722, 54 Stat. 954, 49 U. S. C. 65, are set out in the Appendix, *infra*, pp. 15–20.

STATEMENT

The judgments sought to be reviewed reversed judgments of the district court dismissing, upon motion, suits brought to obtain relief in the nature of mandamus or injunction against the Secretary of the Interior, the Assistant Secretary of the Interior and the Commissioner of the General Land Office. The facts, as alleged in the complaints, may be summarized as follows:

In 1866, lands were granted to the Atlantic and Pacific Railroad Company for the purpose of aiding the construction of the railroad. Act of July 27, 1866, c. 278, 14 Stat. 292. The Santa Fe Pacific Railroad Company, hereinafter referred to as the "Railroad", is the successor to the Atlantic and Pacific Railroad Company (R. 1, 27). Upon

definite location of the Railroad, the rights to certain lands vested pursuant to the Act of 1866 (R. 3, 29). The Act of June 22, 1874, provided that if lands granted to the railroads were found to be in the possession of a settler whose entry or filing had been allowed under the preemption or homestead laws subsequent to the time when, by decision of the Land Office, the right of the Railroad was declared to have attached to the lands, the Railroad, upon a relinquishment of such lands, should be entitled to select an equal quantity of other lands in lieu thereof from public lands "to which they [the Railroad] shall receive title the same as though originally granted." Similarly, the Act of April 28, 1904, provided for the relinquishment of any section of lands in the Territory of New Mexico when any portion of the section had been occupied by settlers and gave to the Atlantic and Pacific Railroad Company the right to select other sections in lieu thereof. In December 1911, the Railroad relinquished and reconveyed certain lands to the United States under the Act of 1904, and, in 1916, lands in Arizona were similarly relinquished and reconveyed under the Act of 1874 (R. 3–4, 29–30).

On August 28, 1940, the Railroad filed its application to select other land in lieu of that which had been relinquished under the 1904 Act (R. 4). A similar application was filed on March 23, 1943, for lands relinquished under the 1874 Act (R. 29–

30). On September 18, 1940, the Transportation Act of 1940 became law. It provides for payment by the United States of the full commercial rates for transportation. Section 321 (b) of the Act provides, in part, as follows:

> If any carrier by railroad furnishing such transportation, or any predecessor in interest, shall have received a grant of lands from the United States to aid in the construction of any part of the railroad operated by it, the provisions of law with respect to compensation for such transportation shall continue to apply to such transportation as though subsection (a) of this section had not been enacted until such carrier shall file with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have against the United States to lands, interests in lands, compensation, or reimbursement on account of lands or interests in lands which have been granted, claimed to have been granted, or which it is claimed should have been granted to such carrier or any such predecessor in interest under any grant to such carrier or such predecessor in interest as aforesaid.

On December 18, 1940, the Railroad filed a release as provided for in the Act (R. 5, 8, 30).

In May and June of 1943, the Commissioner of the General Land Office rejected the Railroad's applications for selections on the ground that the

rights under the 1874 and 1904 Acts had been relinquished by the release filed pursuant to the Transportation Act (R. 5, 30). Appeals were taken, resulting in affirmance by the Assistant Secretary of the Interior of the decision of the General Land Office in three decisions of January 8, 1944 (R. 5, 10–16, 30, 33–46).

After motions for rehearing had been denied (R. 5, 17–19, 30, 46–49), the Railroad filed complaints in the instant cases. After alleging the facts as above outlined, the complaints sought relief by way of injunction and mandamus to compel the Secretary of the Interior and other Department officials to determine the Railroad's right to the lands without regard to the release under the Transportation Act (R. 7, 32). The defendants' motions to dismiss were sustained in both cases and the complaints were dismissed (R. 25, 49).

Upon appeal to the Court of Appeals for the District of Columbia, the decision of the district court was reversed on the ground that the release filed under the Transportation Act did not embrace these claims (R. 53–58). Judge Groner took the contrary view that the 1940 Act was broad enough to cover the lands in dispute (R. 58).

REASONS FOR GRANTING THE WRIT

1. The Railroad has taken advantage of the right, accorded it by the Transportation Act of 1940, to exact full commercial rates from the Gov-

ernment and has filed the release of claims required under that Act. This suit is, we think, an attempt to avoid that release, and the ruling of the court below has approved such avoidance.

The holding of the court below that the claims asserted by the Railroad are not affected by the release executed pursuant to the 1940 Act is based upon its view that the lands to which claim is made, unlike indemnity lands provided for in the 1866 granting act itself (R. 56–57), are not "to aid in the construction of any part of the railroad" within the meaning of the first sentence of Section 321 (b) of the Act.[1] But the claims asserted here are for lands in substitution for lands that had been granted in aid of construction of the railroad but had been reconveyed to the United States because of their occupation by settlers. As the court below recognized, the Acts of 1866, 1874, and 1904 "are by their character related to the same general problem of adjusting railroad land claims" (R. 58). Taking into account the singleness of purpose of these Acts,

[1] The alleged variance in administrative construction, to which the court below referred (R. 55–56), arose from a footnote in the petitioners' briefs below in which it was pointed out that the 1940 Act did not limit the claims required to be released to claims under grants "in aid of construction of the railroad." However, the form of release provided for by regulation (43 Code Fed. Regs. Cum. Supp. sec. 273.64) embraced claims to lands granted, etc., to the railroad "in aid of the construction of any portion of its railroad," and the release here involved so provided (R. 8).

the Department of the Interior has taken the view that the 1874 Act created a right of the same nature as the indemnity provisions of the granting act which gave the grantee the right to select lands in lieu of lands specifically granted but which were lost because of pre-existing rights in others (R. 14, 37). It has concluded that the 1874 Act and the 1904 Act were simply extensions of the indemnity right given in the 1866 Act. Adopting this approach, the district court likewise concluded that the three acts "are each a part of the same legislative scheme and purpose to grant lands in aid of construction of railroads" (R. 23).

In reaching its conclusion that these claims had not been released, the court below placed emphasis on the fact that the lands released under the 1874 and 1904 Acts had, for practical purposes, vested in the railroad. But these lands had been reconveyed and relinquished to the United States in 1911 and 1916. The railroad simply had a claim to select other lands in substitution of those released.[2] The fact that the claims here asserted arose out of the relinquishment of rights to lands previously vested, does not serve to ex-

[2] The instances where, at the time of the release, rights to particular lands had vested in the railroad and where there had been a sale to an innocent purchaser for value are provided for in the last sentence of the 1940 Act. No issue is here presented as to whether the claims are within the saving clause of the 1940 Act and the release, since such issue was not raised by the complaints (R. 6-7, 31-32).

clude such claims from the release. Neither the statute nor the release makes any distinction based on the origin of the claim. Nor does the legislative history of the 1940 Act justify such a limitation.[8]

The court below also emphasized the fact that the railroad was under no compulsion to relinquish the lands and did so only in consideration of the guarantee of replacement lands. But if our view of the statute is the correct one, the Railroad, through the release filed by it, has agreed to accept the right to collect full commercial rates from the Government instead of replacement lands. Moreover, the fact that consideration was given does not make either the 1874 or 1904 Act any less a grant (R. 56). Nor does it justify ignoring the fact that the lands were granted for the purpose of aiding the construction of the road just as much as were the original

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[8] The conference committee summarized this section of the Act as follows (86 Cong. Rec. 10,174):

"Section 321 of part II of title III of the House amendment provided that the full applicable commercial rates, fares, or charges should be paid to any common carrier subject to the Interstate Commerce Act for transportation of persons or property for the United States, or on its behalf, but this provision was conditioned on the release by the carrier of claims against the United States to lands, interest in lands, compensation or reimbursements on account of lands, or interests in lands which have been granted, claimed to have been granted, or which it was claimed should have been granted to such carrier, under any grant from the United States."

lands. The 1874 Act refers to "the adjustment of all railroad land grants" and provides that as to the substitute land, the railroad "shall receive title the same as though originally granted." And the 1904 Act specifically refers to the 1866 Granting Act.[4] Clearly, these claims to substitute lands flow from the grant in aid of construction and, we submit, should be given the same effect as if these rights had been provided for in the 1866 Act. It is, of course, true that if the railroad had not reconveyed the lands under the 1874 and 1904 Acts there would have been no question of application of the release (cf. R. 57). But, since the railroad had voluntarily chosen many years ago to reconvey and thereby exercise its privilege to substitute a claim to select other lands for the lands relinquished, there is no warrant for the conclusion that its rights were of greater dignity than simply a claim to select lands.

The interpretation of the court below means that the release is effective only as to claims arising under the 1866 Act. But the language of the 1940 Act and the release supports the contrary construction by including claims "to lands, interests in lands, compensation or reimbursement

[4] The 1904 Act gave this particular railroad essentially the same right of selection as the 1874 Act gave to land grant railroads generally. The 1904 Act which permitted substitution of entire sections, was passed because the railroad was unwilling to relinquish 160-acre tracts. H. Rep. No. 1203, 58th Cong., 2d sess.; 38 Cong. Rec. 2900.

on account of lands." Since claims for compensation or reimbursement are included, it is immaterial that, at the time of the adoption of the 1874 and 1904 Acts, the construction of the road had been completed. The purpose of these Acts was to aid completion of the process of granting the lands, as provided in the 1866 Act, while the object of the 1940 Act was to compel release of claims and thereby finally conclude the process. The claims were, we submit, included within the release given pursuant to the Transportation Act of 1940.

2. The officials of the Interior Department did not have a plain ministerial duty to ignore the Transportation Act of 1940 and the release given by the Railroad pursuant to that Act. It is apparent from the opinion of the Court of Appeals that the construction given to the statutes by the Interior Department and by the district court was not untenable or unreasonable. The opinion states, "We perceive substantial reasons for endorsing the point of view of the railroad" which was referred to as a "much sounder approach" (R. 56, 58). The conclusion is that "neither policy nor precedent is offended" by the holding which "will more clearly define and establish the respective interests involved" (R. 58). The construction of the administrative officials was, we submit, permissible and the court below has not held otherwise. Thus, the Court of

Appeals has simply expressed its preference for one of two possible constructions of the statutes. But it is well settled that relief by way of injunction in the nature of mandamus will be granted against administrative officials only when their duty in a particular situation is so plainly prescribed as to be free from doubt and equivalent to a positive command. *United States ex rel. Girard Co.* v. *Helvering*, 301 U. S. 540, 543; *Wilbur* v. *United States*, 281 U. S. 206, 218–219; *Litchfield* v. *Register and Receiver*, 9 Wall. 575, 577. This rule applies with equal force to the construction of statutes by officials administering those statutes as it does to their factual determinations (*Hall* v. *Payne*, 254 U. S. 343; *Work* v. *Rives*, 267 U. S. 175, 177–178; *Ness* v. *Fisher*, 223 U. S. 683; *Decatur* v. *Paulding*, 14 Pet. 497, 515), and is of special weight in cases involving the disposition of public lands by the Secretary of the Interior. *Riverside Oil Co.* v. *Hitchcock*, 190 U. S. 316, 324, *et seq.* In *Hall* v. *Payne*, *supra*, at pp. 347–348, this Court stated "From the act, and the Secretary's decision, it is apparent that the latter was not arbitrary or capricious, but rested on a possible construction of the act, and one that the reported decisions of the Land Department show is being applied in other cases * * *. He [the Secretary] could not administer or apply the act without construing it, and its construction involved the

exercise of judgment and discretion. The view for which the relator contends was not so obviously and certainly right as to make it plainly the duty of the Secretary to give effect to it." In the instant case, the officials of the Department of the Interior had the power, indeed the duty, to construe the 1940 Act and the earlier legislation. Thus, the Railroad was here entitled to relief only if it could show that the construction given to the statutes was "arbitrary and capricious" or "clearly erroneous." No such showing having been made, the complaints should have been dismissed.

The court below has asserted authority, not to prevent arbitrary action, but to subject reasonable actions of administrative officers to judicial review. Its decision, therefore, is in conflict with this Court's decision in *Hall* v. *Payne*, 254 U. S. 343, and the other decisions cited above.

3. The questions here presented are important. The 1874 Act is generally applicable to all railroad land grants and there are other similar statutes.[5] The decision below puts in jeopardy the right of the United States to vast amounts of public lands; a file check by the Interior Department has revealed that, under the 1874 statute alone (Appendix, *infra*, pp. 16–17), 55,993.21 acres of public land may be made the subject of claims by railroads

[5] Act of July 1, 1898, c. 546, 30 Stat. 597, 620; Act of March 2, 1899, c. 377, 30 Stat. 993; Act of August 5, 1892, c. 382, 27 Stat. 390.

if the decision of the court below is to stand.[6] This is the first case determining the effect to be given to releases under the Transportation Act of 1940. It is likely, therefore, that other claims of a similar nature will be asserted by land grant railroads.

Moreover, whether a court, in a suit for mandatory relief, can compel an administrative agency to adopt the judicial interpretation of a statute even though the administrative view is not unreasonable, is a question of even more general importance. Unless the decision below is reviewed by this Court, it will constitute a precedent applicable in all such proceedings, whether against officials of the Interior Department or other Government officers. And since such litigation is generally centered in the courts of the District of Columbia, it is particularly in the public interest that this case be reviewed.

CONCLUSION

For the foregoing reasons, this petition for writs of certiorari should be granted.

Respectfully submitted,

J. HOWARD MCGRATH,
Solicitor General.

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[6] This figure does not include possible claims by the Northern Pacific Railroad, since it is not unlikely that that road will choose to exercise its rights under the Act of July 1, 1898, 30 Stat. 597, 620, passed for its special benefit.

APPENDIX

The relevant portions of the Act of July 27, 1866, c. 278, 14 Stat. 292, provide as follows:

An Act granting lands to aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast.

* * * * *

SEC. 3. *And be it further enacted*, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, re-

served, occupied by said homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further*, That the railroad company receiving the previous grant of land may assign their interest to said "Atlantic and Pacific Railroad Company," or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further*, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: *And provided further*, That the word "mineral," when it occurs in this act, shall not be held to include iron or coal: *And provided further*, That no money shall be drawn from the treasury of the United States to aid in the construction of the said "Atlantic and Pacific Railroad."

* * * * *

The Act of June 22, 1874, c. 400, 18 Stat. 194, 43 U. S. C. 888, provides in part as follows:

An act for the relief of settlers on railroad lands,

* * * That in the adjustment of all railroad land grants, whether made directly to any railroad company or to any State for railroad purposes, if any of the lands granted be found in the possession of an actual settler whose entry or filing has been allowed under the pre-emption or homestead laws of the United States subsequent to the time at which, by the decision of the land-office, the right of said road was declared to have attached to such lands, the grantees, upon a proper relinquishment of the lands so entered or filed for, shall be entitled to select an equal quantity of other lands in lieu thereof from any of the public lands not mineral and within the limits of the grant not otherwise appropriated at the date of selection, to which they shall receive title the same as though originally granted. And any such entries or filings thus relieved from conflict may be perfected into complete title as if such lands had not been granted: *Provided,* That nothing herein contained shall be in any manner be so construed as to enlarge or extend any grant to any such railroad or to extend to lands reserved in any land grant made for railroad purposes: *And provided further,* That this act shall not be construed so as in any manner to confirm or legalize any decision or ruling of the Interior Department under which lands have been certified to any railroad company when such lands have been entered by a pre-emption or homestead settler after the location of the line of the road and prior to the notice to the local

land-office of the withdrawal of such lands from market.

The Act of April 28, 1904, c. 1810, 33 Stat. 556 reads as follows:

> *An Act for the relief of small-holding settlers within the limits of the grant of land to the Atlantic and Pacific Railroad Company in the Territory of New Mexico.*
>
> * * * * That the Atlantic and Pacific Railroad Company, its successors in interest and its or their assigns, may, when requested by the Secretary of the Interior so to do, relinquish or deed, as may be proper, to the United States any section or sections of its or their lands in the Territory of New Mexico the title to which was derived by said railroad company through the Act of Congress of July twenty-seventh, eighteen hundred and sixty-six, in aid of the construction of said railroad, any portion of which section is and has been occupied by any settler or settlers as a home or homestead by themselves or their predecessors in interest for a period of not less than twenty-five years next before the passage of this Act, and shall then be entitled to select in lieu thereof, and to have patented other sections of vacant public land of equal quality in said Territory, as may be agreed upon with the Secretary of the Interior.

The Transportation Act of September 18, 1940, c. 722, 54 Stat. 954, 49 U. S. C. 65, provides as follows:

> Sec. 321. (a) Notwithstanding any other provision of law, but subject to the provisions of sections 1 (7) and 22 of the Interstate Commerce Act, as amended, the full applicable commercial rates, fares, or

charges shall be paid for the transportation by any common carrier subject to such Act of any persons or property for the United States, or on its behalf, except that the foregoing provision shall not apply to the transportation of military or naval property of the United States moving for military or naval and not for civil use or to the transportation of members of the military or naval forces of the United States (or of property of such members) when such members are traveling on official duty; and the rate determined by the Interstate Commerce Commission as reasonable therefor shall be paid for the transportation by railroad of the United States mail: *Provided, however,* That any carrier by railroad and the United States may enter into contracts for the transportation of the United States mail for less than such rate: *Provided further,* That section 3709, Revised Statutes (U. S. C., 1934 edition, title 41, sec. 5), shall not hereafter be construed as requiring advertising for bids in connection with the procurement of transportation services when the services required can be procured from any common carrier lawfully operating in the territory where such services are to be performed.

(b) If any carrier by railroad furnishing such transportation or any predecessor in interest, shall have received a grant of lands from the United States to aid in the construction of any part of the railroad operated by it, the provisions of law with respect to compensation for such transportation shall continue to apply to such transportation as though subsection (a) of this section had not been enacted until such carrier shall file with the Secretary of the Interior, in the form and manner pre-

scribed by him, a release of any claim it may have against the United States to lands, interests in lands, compensation, or reimbursement on account of lands or interests in lands which have been granted, claimed to have been granted, or which it is claimed should have been granted to such carrier or any such predecessor in interest under any grant to such carrier or such predecessor in interest as aforesaid. Such release must be filed within one year from the date of the enactment of this Act. Nothing in this section shall be construed as requiring any such carrier to reconvey to the United States lands which have been heretofore patented or certified to it, or to prevent the issuance of patents confirming the title to such lands as the Secretary of the Interior shall find have been heretofore sold by any such carrier to an innocent purchaser for value or as preventing the issuance of patents to lands listed or selected by such carrier, which listing or selection has heretofore been fully and finally approved by the Secretary of the Interior to the extent that the issuance of such patents may be authorized by law.

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